

FPPC Advice Summaries

Formal written advice provided pursuant to Government Code section 83114 subdivision (b) does not constitute an opinion of the Commission issued pursuant to Government Code section 83114 subdivision (a) nor a declaration of policy by the Commission. Formal written advice is the application of the law to a particular set of facts provided by the requestor. While this advice may provide guidance to others, the immunity provided by Government Code section 83114 subdivision (b) is limited to the requestor and to the specific facts contained in the formal written advice. (Cal. Code Regs., tit. 2, §18329, subd. (b)(7).)

Informal assistance may be provided to persons whose duties under the act are in question. (Cal. Code Regs., tit. 2, §18329, subd. (c).) In general, informal assistance, rather than formal written advice is provided when the requestor has questions concerning his or her duties, but no specific government decision is pending. (See Cal. Code Regs., tit. 2, §18329, subd. (b)(8)(D).)

Formal advice is identified by the file number beginning with an "A," while informal assistance is identified by the letter "I." Letters are summarized by subject matter and month issued.

Campaign

Patricia E. Campbell
City of Seal Beach
Dated: September 1, 2004
File Number A-04-153

A defeated candidate for city clerk asks if she can amend her campaign termination statement to show loans as outstanding, when she mistakenly reported them as forgiven on her initial filing. In these limited circumstances where she does not intend to reopen the committee or fundraise in any way, she may file an amendment to her campaign form to correct the loan status.

David Bauer
Citizens for Bob Margett &
Committee to Re-elect Bob Margett
Dated: September 2, 2004
File Number A-04-179

Campaign committees established for elections held prior to the effective date of Proposition 34 – 2000 are not subject to the contribution limits of sections 85301 and 85302. Since this is the case, attribution is not required when funds are transferred to these committees from a future election committee that is subject to Proposition 34's contribution limits.

Kinde Durkee, Treasurer
Westly 2006 Committee
Dated: September 9, 2004
File Number A-04-182

A state candidate's committee may receive shares of stock as a non-monetary contribution, as long as the value of the stock on the day of transfer does not exceed the contribution limits and the stock is converted to cash prior to expenditure.

Jeffrey R. Dodge
PACE International Union
Dated: September 15, 2004
File Number A-04-185

The Act does not specify or prohibit any particular method of raising contributions and making expenditures. As long as the union properly reports its political activities and complies with the record keeping requirements and contribution limits, the method used by the union to collect contributions from its members does not violate any provisions of the Act.

Dennis Zell
California Assembly
Dated: August 5, 2004
File Number A-04-142

The owner of a billboard is advised that renting billboard space to candidates at a price not available to the general public would constitute a non-monetary contribution to the candidate.

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Michael T. McKeeman
Oakdale Elementary School District
Dated: August 23, 2004
File Number A-04-171

A school district's proposed informational materials to be sent to parents regarding an upcoming school bond issue is analyzed. It is concluded that the materials do not contain "express advocacy" and therefore, are not expenditures subject to regulation under the Act.

Jonathan Dickinson
Roy Ashburn for Congress
Dated: August 20, 2004
File Number A-04-177

A state elected official may accept contributions to the official's federal office campaign committee from a lobbyist registered to lobby the state official.

Wendy L. Prather, CPA
Friends of Tom Berryhill
Dated: July 8, 2004
File Number A-04-102

A candidate who opened a 2004 committee for a primary election to an Assembly seat, but who did not appear on the ballot for that election, is advised that the candidate may transfer without attribution those funds to a committee for the next election to that seat in 2006.

Diane M. Fishburn
O'Connell 2006
Dated: July 23, 2004
File Number A-04-110

A statewide officeholder is advised on various issues concerning campaign recordkeeping for purposes of section 85700 and the use of interest on pre-34 campaign contributions.

Steven G. Churchwell
Californians Against Government Run Healthcare
Dated: July 23, 2004
File Number A-04-113

A trade association and its sponsored political action committee are separate donors for purposes of advertising disclosure rules.

Harvey Gerber
City of Rancho Mirage
Dated: July 6, 2004
File Number A-04-122

A donation of campaign funds by a member of a city council to a local nonprofit theater that is supported in part by city funds and used as a venue for city events is permissible.

Steven G. Churchwell
California Landscape Contractors Association
Dated: July 27, 2004
File Number A-04-143

Nothing in the Act prohibits a sponsor from transferring funds from its membership account to its sponsored PAC. The sponsor will not qualify as a committee by virtue of these transfers. However, if the transferred funds are from membership dues, the funds must be attributed to the members of the sponsor on a pro rata basis. No single member may give more than \$5,300 to the PAC for purposes of making contributions to state candidates. On the other hand, if the transfer to the PAC consists of funds other than membership dues, the sponsor cannot transfer (in the aggregate) more than \$5,300 per year.

Conflict of Interest

Laurence S. Wiener
Vigo G. Nielsen, Jr.
City of Beverly Hills
Dated: September 1, 2004
File Numbers I-04-107 & I-04-125

Informal assistance is provided to a city council member and a potential source of income of income or gifts regarding whether a finder's fee is income or a gift, and what materiality standard under a conflict-of-interest analysis would apply to a newly formed corporation. The payment of a finder's fee is income if consideration of equal or greater value is provided in exchange for the payment.

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Robert C. Cheasty
Citizens for the Eastshore State Park

Dated: September 23, 2004

File Number I-04-139

The president and CEO of a nonprofit 501(c)(3) organization is considering running for a locally elected office. The officer is not paid for his service to the nonprofit. The officer asks if he has a conflict of interest under the Act. A 501(c)(3) nonprofit organization is not a business entity under the Act. Additionally, because the officer is not paid by the nonprofit, he has no economic interest in the nonprofit organization. Since the officer has no economic interest in the nonprofit organization, there is no potential for a conflict of interest under the Act.

Elizabeth Conner

City of Arcata

Dated: September 9, 2004

File Number A-04-166

Under the nexus rule, a public official who is an executive director of a nonprofit entity will have a conflict of interest in a decision before the official's agency.

Rafael Adame

City of Watsonville

Dated: September 7, 2004

File Number I-04-175

A city building official with supervisory authority over city building inspectors requests advice under the Act's conflict-of-interest provisions when he has purchased a vacant lot within the city limits and intends to construct a building on that lot for which inspections and permits would be required. He was advised that he would have a conflict of interest if he used his position to influence the decision regarding the issuance of the building permits, including participation in the supervision of others involved in the decision.

Laura McKinney

City of Berkeley

Dated: September 8, 2004

File Number A-04-178

Absent an exception, a council member and planning commissioner were advised that they could only participate in decisions to change the

zoning of property in the jurisdiction (including their own) if there is no reasonably foreseeable material financial effect on their respective properties. Where the decision solely concerns the amendment of an existing zoning ordinance or other land use regulation (such as changes in the uses permitted, or development standards applicable, within a particular zoning category) which is applicable to all other properties designated in that category, the officials' real property interests will be considered indirectly involved in the decision. Also discussed is the exception by which officials may appear before his or her own agency as a member of the general public in the course of its prescribed governmental function in order to represent himself or herself on matters related solely to his or her personal interests, and the "public generally" exception.

Heather C. Mc Laughlin

City of Benicia

Dated: September 21, 2004

File Number A-04-192

A mayor's business property, which is located within 500 feet of the boundaries of the property which is the subject of the governmental decision, is not financially affected by the governmental decision. Therefore, the mayor has rebutted the presumption that the financial effect of the decision on the mayor's property is material and does not have a conflict of interest in the decision and may participate in the decision.

William Lepowsky

Dated: August 20, 2004

File Number A-04-126

Based on regulation 18702.4(c)(1), the Act does not restrict a public official/teacher's communication with other faculty at his school concerning purchase and use of a textbook which the official authored.

John P. Fraser

El Dorado Irrigation District

Dated: August 19, 2004

File Number A-04-128

Advises on the applicability of the "legally required participation" exception to the conflict-of-interest rules in the context of a public official who wishes to sign a legal tolling agreement as a member of an agency.

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Edgar W. Reece, CEO
City of Claremont
Dated: August 20, 2004
File Number I-04-135

A community member asks if there are any restrictions applicable to him if he joins the police commission. General advice is given regarding the conflict-of-interest provisions. His company provides consulting services to the city and may qualify certain employees as consultants under the Act.

Alix A. Rosenthal
Town of Plymouth
Dated: August 20, 2004
File Number A-04-138

A council member may participate in a municipal services agreement decision if it is not reasonably foreseeable that the decision will financially and materially affect the member's economic interests. Regarding the member's real property interest, it is presumed that the member's leasehold interest will experience a material financial effect, but the presumption may be rebutted.

Marshall S. Rudolph
Mono County Planning Commission
Dated: August 5, 2004
File Number A-04-144

The Act does not prohibit a county planning commissioner from contracting with the county. Other provisions of law, not within the Act may apply. The Act would, however, prohibit the commissioner from making, participating in making, and influencing the decision on the contract.

Huston T. Carlyle, Jr.
San Bernardino City Unified School District
Dated: August 13, 2004
File Number A-04-145

A council member does not have an economic interest in his governmental employer or union.

Dominic Dutra
City of Fremont
Dated: August 3, 2004
File Number I-04-148

A real estate broker, employed by a brokerage firm, who is also a public official, is advised in general terms that those persons, including business entities who become sources of income, whether through the Commission or otherwise, of \$500 or more will also become his economic interests. The letter contains a general discussion of when an economic interest might trigger disqualification from a particular governmental decision.

Richard R. Rudnansky
Town of Windsor
Dated: August 17, 2004
File Number I-04-160

A planning commissioner is a one-half partner in an urban design business. As part of the work performed for clients, the commissioner and her firm often submit maps and drawings on behalf of their clients who have applications pending before various governmental agencies. The commissioner was advised that except as permitted by regulation 18702.4(b)(4), she may not appear before the planning commission, an agency which is appointed by the planning commission or over which the planning commission has budgetary control, or the staff of the respective agencies. However, her partner is not prohibited from appearing.

John C. Spencer
County of Nevada
Dated: August 31, 2004
File Nos. I-04-161 & I-04-162

A planning commissioner is advised generally in the letter regarding appearing before his agency or other agencies within the county and what would constitute the prohibited use of his governmental position to influence a decision regarding a private client. Further, the official is advised regarding potential conflict-of-interest issues when a source of income to his business, an engineering consultant, is hired by a project applicant who will appear before the planning commission for review and approval of a subdivision plan.

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Mark D. Hensley
City of Port Hueneme
Dated: August 26, 2004
File Number A-04-168

A city council member may not make, participate in making or influence any decision regarding a condominium project since it will have a reasonably foreseeable material financial effect on his economic interests in real property, and his undivided interest in common areas of the condominium complex where he resides. If an exception applies, however, the council member may address the issue in a noticed meeting as a member of the general public.

H. Peter Klein
County of Mendocino
Dated: July 22, 2004
File Number I-04-038

The Commission could not determine, as a general proposition, whether any of the seven members of a planning commission had a conflict of interest in decisions related to a proposed county grading ordinance. A reasonably foreseeable, material financial effect on any member's economic interests could not be established without more particularized details on the contents of the draft ordinance, the nature of specific decisions before the planning commission, and plans for development of real property potentially subject to the ordinance in question.

Peter M. Thorson
City of Temecula
Dated: July 2, 2004
File Number I-04-106

A mayor is advised that he does not have a conflict of interest in participating in a governmental decision involving a developer because he worked for an engineering firm which was employed on the developer's project in another city, unless there is a reasonably foreseeable material financial effect on his employer.

Celia A. Brewer
City of Solana Beach
Dated: July 6, 2004
File Number A-04-123

It is presumed that the financial effect of specific user permit decisions on an official's real property is not material. The official may wish to apply the segregation/segmentation rules to segregate interlinked decisions which may reopen prior decisions in which an official had a disqualifying financial interest.

Roy A. Hanley
City of Atascadero
Dated: July 6, 2004
File Number A-04-129

A public official does not have an economic interest in real property owned by an adult-child under the Act's current definition of "immediate family."

Patricia Murray
Yolo Wayfarer Christian Mission Board
Dated: July 6, 2004
File Number A-04-141

A member of a planning commission requested advice as to whether by making a decision which will have an effect on a nonprofit organization of which she is a board member, she will have a conflict of interest under the Act. The planning commissioner will not have a conflict of interest in the decision because she does not have an economic interest in the decision. She does not receive any income from the nonprofit. In addition, the planning commissioner's board membership with the nonprofit is not disqualifying since nonprofit organizations are not considered business entities under the Act. Therefore, her board membership would not be considered a business position.

Michelle L. Robinson
Department of Consumer Affairs
Dated: July 30, 2004
File Number I-04-151

This requestor provides computer-based testing services to the Office of Examination Resources under the DCA and seeks participation in a private consulting service business for development of proposals which offer test valida-

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tion and test administration services to public agencies. She is advised that this is a question not governed by the Act.

Michael D. Milich
City of Modesto
Dated: July 23, 2004
File Number A-04-157

A follow-up to *Milich* Advice Letter, No. A-04-127. Where a business has annual receipts in excess of one billion and earnings before taxes in excess of \$2.5 million, the financial effect of a governmental decision on the business is considered material if it will result in an increase or decrease to the business entity's gross revenues for a fiscal year in the amount of \$500,000 or more, or in the value of assets or liabilities of \$500,000 or more, or will affect expenses for a fiscal year in the amount of \$200,000 or more.

Conflict of Interest Code

Renee A. Stadel
City of Los Angeles
Dated: July 2, 2004
File Number I-04-101

Regulation 18751 authorizes code reviewing bodies to adopt exemption criteria which are the same or similar to the criteria for state agencies. However, even if the agency is found to be an exempt agency by the local code reviewing body, the members may still be public officials subject to section 87100, et seq. Ultimately, whether the members would be exempt from the disclosure requirements of the Act is an issue the city would need to address as the code reviewing body.

Gift Limits

W. Dale Harvey
Central Valley Regional Water Quality Control Board
Dated: July 6, 2004
File Number I-04-097

An employee is advised of the Act's provisions relating to the reporting and acceptance of a gift

in a bona fide dating relationship. Gifts of a personal nature received in a bona fide dating relationship are not subject to reporting or gift limitations.

Michael Stanton
The Bond Buyer
Dated: July 23, 2004
File Number A-04-137

A manager of a financial newspaper is provided advice relating to awards or prizes potentially given to a public official as a raffle winner at a conference sponsored by the newspaper and open to the public.

Linda Y. Chang
Department of Toxic Substances Control
Dated: July 19, 2004
File Number A-04-158

A state employee who is also vice mayor for a city was advised that a leadership seminar she was invited to attend as a result of her vice mayoral position would be considered to be informational material and, therefore, the tuition would not be a gift. Meals and lodging provided in connection with attendance at the seminar are reportable gifts to the official. However, because the meals and lodging are provided by a 501(c)(3) organization and the travel is being conducted on an issue of public policy, the payments for meals and lodging will not be subject to the gift limit.

Lobbying

Bob Blattner
School Services of California
Dated: August 19, 2004
File Number A-04-124

Section 85702 does not prohibit contributions from a lobbying firm, where the firm has established a committee of non-lobbyists to make all contribution decisions for the firm.

Steven A. Burk
Miller Brewing Company
Dated: July 27, 2004
File Number A-04-154

Subsidiaries of a company are required to be

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identified on any lobbying reports if they do not pay or in any way direct and control payments for lobbying activities.

Mass Mailing

Mark C. Joseph
Strawberry Recreation District
Dated: August 5, 2004
File Number I-04-167

A recreation district may not publish and distribute a brochure containing a letter from the chair of the district's elected board of directors under section 89001.

Vickie Thornell
Mojave Water Agency
Dated: July 7, 2004
File Number A-04-095

A water agency may produce a display map featuring the elected members of the agency and not run afoul of the mass mailing provisions in the Act because the display map is not mailed or otherwise sent to other persons.

Mark van de Kamp
City of Santa Maria
Dated: July 13, 2004
File Number A-04-130

Because the Act's mass mailing prohibition does not apply to electronic mail or websites, a city is advised that it may post the mayor's message welcoming visitors to the city on its website without violating the mass mailing prohibition. Whether or not the message constitutes a contribution to the mayor is also discussed. Because the message contains no express advocacy, does not make reference either to the mayor's candidacy for elective office or to that of his opponents, and does not solicit contributions, the letter determines that no contribution to the mayor will result from the city's posting of the message.

Revolving Door

Michael P. White
Department of Aging
Dated: August 31, 2004
File Number I-04-155

A state employee is provided informal assistance relating to post-governmental employment provisions of the Act. The employee contends that she does not meet the definition of "public official" but she is designated in the conflict of interest code. The Act's three main post-governmental restrictions on individuals who leave state service may apply.

Dennis A. Dickerson
Los Angeles Regional Water Quality Control Board
Dated: August 19, 2004
File Number I-04-156

A former member of a regional water quality control board is advised on the application of the revolving door rules addressing post-governmental employment. The former public official wishes to perform consulting services for a client who appeared before the board while the former official was a member of the board.

Section 84308

Kristin S. Stergakos
Dated: August 2, 2004
File Number I-04-149

A planning commissioner who is also a candidate for city council anticipated that a business entity and an employee of that business entity would each contribute \$249 to her city council campaign and that, within 12 months of these contributions, the business entity would appear before the planning commission seeking a permit for a redevelopment project. The planning commissioner asked whether the two contributions would be aggregated together to disqualify her, under section 84308, from taking part in a decision on that application. The absence of information regarding the circumstances surrounding the contributions made it possible only to explain that, in general, contributions would

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be aggregated for purposes of section 84308 when one contributor directs and controls the contribution(s) of another.

Jerry Smith, Mayor
City of Seaside
Dated: August 31, 2004
File Number A-04-184

Section 84308 applies to city council members who also serve as members of the city redevelopment agency *unless* the board is made up of the city council in its entirety without any other members.

Statement of Economic Interests

Peggy Bernardy
Department of Water Resources
Dated: August 20, 2004
File Number I-04-041

A state agency requested advice as to whether the officials, employees or contractors of a local agency are "consultants" for purposes of the PRA due to the responsibilities that have been assumed in a local project agreement working with the U.S. Army Corps of Engineers. The individuals performing the contracting functions for the state agency with substantive review are consultants. In addition, those individuals serving in a staff capacity and participating in governmental decisions are also consultants under the state agency's conflict of interest code.

Leslie E. Murad, II
City of Redlands
Dated: August 19, 2004
File Number A-04-067

A city council is advised that an economic development consultant hired for the period of one year to coordinate economic development activities between the city and the redevelopment agency as well as to provide information, recommendations and advice to the different city agencies on economic development is not considered to be a "consultant" under the Act. He will not make governmental decisions and his limited term and duties do not qualify him under the "serves in a staff capacity" test.

Leslie E. Murad, II
City of Redlands
Dated: August 19, 2004
File Number A-04-070

A city council is advised that the individuals of a professional engineering firm hired for an on-going time period to review engineering plans, maps and documents relative to proposed development, as well as to examine building plans for compliance with state building codes and to perform field inspections as a building inspector, are considered to be "consultants" under the Act and are therefore obligated to file a Form 700. They will make governmental decisions by being able to suspend work on projects pending changes being made and they also "serve in a staff capacity" since the work is normally performed by staff which should be designated in the conflict of interest code.

Louis R. Calcagno
Monterey County
Dated: August 31, 2004
File Number A-04-173

A member of a county board of supervisors is advised that neither a business position with a nonprofit corporation nor a share of that corporation is a reportable interest, because a nonprofit corporation is not a business entity as defined by the Act.

Joseph R. Brown
Midland Management Corp.
Dated: August 31, 2004
File Number G-04-181

A legislative amendment to section 82034 would be needed to exempt disclosure of managed stock investment accounts. No advice is rendered.